

FIRST REGULAR SESSION

HOUSE BILL NO. 851

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PARKINSON.

2073H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 34.378, RSMo, and to enact in lieu thereof one new section relating to contingency fee limits for contracts between the state and private attorneys.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 34.378, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 34.378, to read as follows:

34.378. 1. The state shall not enter into a contingency fee contract with a private attorney unless the attorney general makes a written determination prior to entering into such a contract that contingency fee representation is both cost effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

(1) Whether there exists sufficient and appropriate legal and financial resources within the attorney general's office to handle the matter;

(2) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly;

(3) The geographic area where the attorney services are to be provided; and

(4) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

2. If the attorney general makes the determination described in subsection 1 of this section, the attorney general shall request written proposals from private attorneys to represent the state, unless the attorney general determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in writing. If a request for proposals is issued, the attorney general shall choose the lowest and best bid or request the office

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 of administration establish an independent panel to evaluate the proposals and choose the lowest
18 and best bid.

19 **3. The state shall not enter into a contingency fee contract that provides for the**
20 **private attorney to receive an aggregate contingency fee in excess of:**

21 **(1) Twenty-five percent of any recovery up to ten million dollars; plus**

22 **(2) Twenty percent of any portion of such recovery between ten million one dollars**
23 **and fifteen million dollars; plus**

24 **(3) Fifteen percent of any portion of such recovery between fifteen million one**
25 **dollars and twenty million dollars; plus**

26 **(4) Ten percent of any portion of such recovery between twenty million one dollars**
27 **and twenty-five million dollars; plus**

28 **(5) Five percent of any portion of such recovery in excess of twenty-five million**
29 **dollars.**

30 **4.** The state shall not enter into a contract for contingency fee attorney services unless
31 the following requirements are met throughout the contract period and any extensions to the
32 contract:

33 (1) The government attorneys shall retain complete control over the course and conduct
34 of the case;

35 (2) A government attorney with supervisory authority shall oversee the litigation;

36 (3) The government attorneys shall retain veto power over any decisions made by outside
37 counsel;

38 (4) A government attorney with supervisory authority for the case shall attend all
39 settlement conferences; and

40 (5) Decisions regarding settlement of the case shall be reserved exclusively to the
41 discretion of the attorney general.

42 **[4.] 5.** The attorney general shall develop a standard addendum to every contract for
43 contingent fee attorney services that shall be used in all cases, describing in detail what is
44 expected of both the contracted private attorney and the state, including, without limitation, the
45 requirements listed in subsection 3 of this section.

46 **[5.] 6.** Copies of any executed contingency fee contract and the attorney general's written
47 determination to enter into a contingency fee contract with the private attorney shall be posted
48 on the attorney general's website for public inspection within five business days after the date
49 the contract is executed and shall remain posted on the website for the duration of the
50 contingency fee contract, including any extensions or amendments to the contract. Any payment
51 of contingency fees shall be posted on the attorney general's website within fifteen days after the

52 payment of such contingency fees to the private attorney and shall remain posted on the website
53 for at least three hundred sixty-five days.

54 [6.] 7. Any private attorney under contract to provide services to the state on a
55 contingency fee basis shall, from the inception of the contract until at least four years after the
56 contract expires or is terminated, maintain detailed current records, including documentation of
57 all expenses, disbursements, charges, credits, underlying receipts and invoices, and other
58 financial transactions that concern the provision of such attorney services. The private attorney
59 shall maintain detailed contemporaneous time records for the attorneys and paralegals working
60 on the matter in increments of no greater than one-tenth of an hour and shall promptly provide
61 these records to the attorney general, upon request. Any request under chapter 610 for inspection
62 and copying of such records shall be served upon and responded to by the attorney general's
63 office.

64 [7.] 8. By February first of each year, the attorney general shall submit a report to the
65 president pro tem of the senate and the speaker of the house of representatives describing the use
66 of contingency fee contracts with private attorneys in the preceding calendar year. At a
67 minimum, the report shall:

68 (1) Identify all new contingency fee contracts entered into during the year and all
69 previously executed contingency fee contracts that remain current during any part of the year,
70 and for each contract describe:

71 (a) The name of the private attorney with whom the department has contracted, including
72 the name of the attorney's law firm;

73 (b) The nature and status of the legal matter;

74 (c) The name of the parties to the legal matter;

75 (d) The amount of any recovery; and

76 (e) The amount of any contingency fee paid;

77 (2) Include copies of any written determinations made under subsections 1 and 2 of this
78 section.

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